

DATE: June 26,. 2001

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 00-0501

DECISION OF ADMINISTRATIVE JUDGE

KATHRYN MOEN BRAEMAN

APPEARANCES

FOR GOVERNMENT

Kathryn A. Trowbridge, Esquire, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's conduct raises security concerns over his finances, alcohol abuse, personal conduct and criminal conduct. He admitted filing for bankruptcy in 1987 which was discharged and again in 2000. He claimed his debts were discharged in the 2000 filing but failed to submit any evidence of the discharge. Further Applicant deliberately misled the Government by omissions from his security form. Thus, the Government has established a case of criminal falsification under 18 U.S.C. section 1001 as he was clearly put on notice of that section of the criminal code to emphasize that he had a duty to reveal all adverse information on the SF 86. Instead he improperly certified that his answers were "true, complete, and correct." On the other hand he has mitigated the isolated alcohol-related arrest. Clearance is denied.

STATEMENT OF THE CASE

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 12, 2000. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. [\(1\)](#) (Item 1) The SOR alleges specific concerns in paragraph 1 over financial issues (Guideline F), alcohol abuse (Guideline G), personal conduct (Guideline E) and criminal conduct (Guideline J). Applicant responded to these SOR allegations in an Answer notarized on December 29, 2000, where he admitted paragraphs 1.a. through 1.f. but provided explanations; he admitted paragraph 2.a.; he admitted paragraphs 3.a. through 3.d.; and he admitted paragraph 4.a. through 4.c. He requested a determination on the record. (Item 3)

The case was assigned to Department Counsel; on January 25, 2001, she prepared the File of Relevant Material (FORM) for the Applicant's review. Department Counsel advised Applicant that he had 30 days to submit objections and/or information before the FORM was submitted to an administrative judge and that he had the right to be represented by counsel. A Personnel Security Specialist (PSS) sent the FORM to Applicant on January 26, 2001, and again notified the Applicant that he had 30 days from receipt of the letter to submit objections and/or information before

the FORM was submitted to an administrative judge. Applicant received the FORM on February 12, 2001. However, he did not submit any response before the deadline of March 14, 2001. On May 7, 2001, the case was assigned to me.

FINDINGS OF FACT

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following additional Findings of Fact:

Applicant who is a 45 years old has been an employee of a defense contractor in State #1 since December 1979. He applied for a security clearance in June 1999 by completing a Security Clearance Application (Standard Form 86) (SF 86). He was divorced in April 1999; he has two children born in 1980 and 1985. (Item 4) He reported no adverse information on his security clearance form. (Item 4)

Financial Considerations and Personal and Criminal Conduct

While his June 1999 security clearance application revealed no adverse financial issues, a December 1999 Report of Credit revealed several delinquencies. (Item 9) In arch 2000 Defense Security Service (DSS) interviewed Applicant who said that he decided to file for bankruptcy in February 2000 (SOR 1.b.) because of his 1999 divorce which led to increased living expenses after he and his wife separated in September 1998. There he disclosed net monthly take home pay of approximately \$1,500 with approximately \$1,500 in monthly expenses. Debts to three of his creditors (Creditor #1, #2, #3 are included in the bankruptcy filing (SOR 1.c., 1.d., and 1.e), but he submitted no evidence that these debts have been discharged. His debt to creditor #4 is not included in the filing; while he claimed it was also discharged, he submitted no evidence that it had been discharged. (SOR 1.f.). (Items 5, 6) Further, he did not explain the circumstances that led to his (and his wife's) decision to file for Chapter 7 bankruptcy in November 1986 where approximately \$10,000 in unsecured debts were discharged in April 1987. (SOR 1.a.) In his Answer notarized on October 30, 2000, he admitted paragraphs 1.a. through 1.f., but explained that his debts had been discharged; however, he submitted no supportive documentation. Weighing all of this evidence, I conclude Applicant did intend to mislead the U.S. government by omitting this adverse financial information from his SF 86 as his financial issues arising from the divorce existed at the time, yet he knowingly and willfully failed to include that adverse information on his security form.

Alcohol Consumption and Personal and Criminal Conduct

On the SF 86 in June 1999 Applicant revealed no adverse information on alcohol abuse or arrests and certified that his statements on the form were "true, complete, and correct." (Item 4) However, he omitted his arrest of February 1999 where he was found guilty in April 1999 of Driving under the Influence (DUI) and placed on twelve months supervised probation and fined \$6000 plus community service, ordered to enroll in DUI school; his probation was terminated early for successfully completing all the conditions of probation.

When he was interviewed by the DSS investigator in March 2000, Applicant excused his actions by saying he did not attempt to "hide anything." However his defenses that he did not put the information on the form out of embarrassment or because he just forgot it is not credible. He claimed the DUI was "completely over with." But the arrest happened in the same year he completed the security form, and he was still on probation at the time he omitted the information. Weighing all of this evidence, I conclude Applicant did intend to mislead the U.S. government by omitting this arrest information from his SF 86. (Items 4, 5)

In mitigation Applicant maintained he completed his drug and alcohol assessment program and required no counseling or treatment as support for a view that the incident was isolated. Further, he has not experienced any other adverse consequences of alcohol. While he continues to drink, he does so only once or twice a week for a limited time period. (Item 5)

Criminal Conduct

Applicant admitted that in August 1999 he was charged with a misdemeanor violation of an injunction against domestic violence and in September 1999 pled nolo contendere and was found guilty and placed on twelve months supervised probation as well as fined and instructed to enroll in the Domestic Violence Intervention program. (Answer, Items 5, 8)

Further, on the SF 86 in June 1999 Applicant revealed no adverse information and certified that his statements on the form were "true, complete, and correct." He was advised that a knowing and willful false statement of this form could be punished by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code. (Item 4)

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. They are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns in deciding whether to grant or continue an individual's access to classified information. But the mere presence or absence of any given adjudication policy condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed relevant Adjudication Guidelines as set forth below :

Guideline F - Financial Considerations

An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

Conditions that could raise a security concern and may be disqualifying include:

- (1) a history of not meeting financial obligations;
- (3) inability or unwillingness to satisfy debts;

Conditions that could mitigate security concerns include:

None

Guideline G --Alcohol Consumption

Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

Conditions that could raise a security concern and may be disqualifying include:

- (1) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use;

Conditions that could mitigate security concerns include:

- (1) The alcohol related incidents do not indicate a pattern;

Guideline E - Personal Conduct

Conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information.

Conditions that could raise a security concern and may be disqualifying also include:

- (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities

Conditions that could mitigate security concerns include:

None

Guideline J - Criminal Conduct

A history or pattern of criminal activity creates doubt about a person's judgment, reliability and trustworthiness.

Conditions that could raise a security concern and may be disqualifying include:

(2) A single serious crime or multiple lesser offenses.

Conditions that could mitigate security concerns include:

None

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

CONCLUSIONS

Criterion F - Financial Considerations

The Government raised security concerns over Applicant's financial problems: he has (1) a history of financial problems and (3) an inability or unwillingness to satisfy debts (SOR 1.a.-1.f.) He has twice filed for bankruptcy. He filed for Chapter 7 bankruptcy in November 1986 where approximately \$10,000 in unsecured debts were discharged in April 1987. While he claimed to have resolved his current financial position by having again filed for bankruptcy in March 2000, he provided no documentation of the discharge of his debts. He had the responsibility to present evidence of his steps to mitigate these issues. In response to the FORM he presented no subsequent evidence that these debts had been resolved by discharge in bankruptcy nor any other evidence that he had addressed his financial issues in a way that demonstrates that his finances are now under control. In sum, beyond his assertions in his Answer that the debts were discharged, he presented no further evidence that he had taken good faith efforts to resolve these past financial issues. Thus, I conclude he has not met the conditions (MC⁽²⁾) that mitigate these security concerns. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a. through 1.f. under SOR Paragraph 1.

Alcohol Consumption

The Government has security concerns over Applicant's alcohol-related arrest in 1999. Conditions that could raise a security concern and may be disqualifying include: (1) Alcohol-related incidents away from work, such as driving while under the influence. When he was arrested for DWI, he pled nolo, was fined, and his license was suspended for six months. However, subsequently, Applicant completed the court-mandated education program and was released early from probation for successfully completing all of the terms. Applicant required no counseling or treatment. Further, he has not experienced any other adverse consequences of alcohol; while he continues to drink, he does so only once or twice a week for a limited time period. Thus Applicant meets conditions that mitigate security concerns: (1) The alcohol related incidents do not indicate a pattern. After considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule for Applicant on subparagraphs 2.a. under SOR Paragraph 2.

Personal Conduct

The Government cited security concerns over personal conduct issues in that Applicant willfully falsified his SF 86 by

omitting adverse financial and arrest information which was subsequently documented in his credit and arrest reports. Such conduct⁽³⁾ reflects questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations and could indicate that the person may not properly safeguard classified information. While Applicant declared he did not intentionally omit this information from his SF 86, that assertion is an insufficient defense to the requirement to be forthcoming on a security investigation. The adverse incidents were current at the time he completed the form so his claim that he simply forgot is not credible. Further, he does not meet the mitigating conditions as there is no evidence of C 3: The individual made prompt, good-faith efforts to correct the falsification before being confronted with the facts or of MC 4: Omission of material facts was caused or significantly contributed to by improper or inadequate advice of authorized personnel, and the previously omitted information was promptly and fully provided. While Applicant excused his actions by saying he did not attempt to "hide anything," his defenses that he did not put the information on the form out of embarrassment or because he just forgot it is not credible. For example, he claimed the DUI was "completely over with," but the arrest happened in the same year he completed the security form, and he was still on probation at the time he omitted the information. Thus, I conclude that Applicant did deliberately mislead the Government by these omissions. Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 3.a. through 3.d. under SOR Paragraph 3.

Criminal Conduct

The Government alleges security concerns over criminal conduct issues because of his DUI arrest and conviction and the 1999 violation of the injunction against domestic violence. Also he omitted relevant information from his security form discussed above. The Government has established a case of criminal falsification under 18 U.S.C. section 1001 as he was clearly put on notice of that section of the criminal code to emphasize that he had a duty to reveal all adverse information on the SF 86. Instead he improperly certified that his answers were "true, complete, and correct." For the reasons discussed above, I conclude his conduct in omitting his material adverse financial and arrest data was knowing and willful in intent. Thus, after considering the Appendix I Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraph 4.a. through 4.c. under SOR Paragraph 4.

FORMAL FINDINGS

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant

Subparagraph 1.b.: Against Applicant

Subparagraph 1.c.: Against Applicant

Subparagraph 1.d.: Against Applicant

Subparagraph 1.e.: Against Applicant

Subparagraph 1.f.: Against Applicant

Paragraph 2. Guideline G: FOR APPLICANT

Subparagraph 2.a.: For Applicant

Paragraph 3. Guideline E AGAINST APPLICANT

Subparagraph 3.a.: Against Applicant

Subparagraph 3.b.: Against Applicant

Subparagraph 3.c.: Against Applicant

Subparagraph 3.d.: Against Applicant

Paragraph 4. Guideline J: AGAINST APPLICANT

Subparagraph 4.a.: Against Applicant

Subparagraph 4.b.: Against Applicant

Subparagraph 4.c.: Against Applicant

DECISION

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant.

Kathryn Moen Braeman

Administrative Judge

1. This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

2. Conditions that could mitigate security concerns include: 1. The behavior was not recent; 2. It was an isolated incident; 3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation); 4. The person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control; 5. The affluence resulted from a legal source; and 6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

3. Conditions that could raise a security concern and may be disqualifying also include: (2) the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.